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DEPARTMENT OF COMMERCE
International Trade Administration
[A-570-831]

Fresh Garlic from the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from interested parties, the Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on fresh garlic from People's Republic of China (PRC) covering the period of review (POR) of November 1, 2009, through October 31, 2010.

The Department preliminarily finds that two fully participating mandatory respondents have demonstrated their eligibility for a separate rate, and sold subject merchandise to the United States at prices below normal value (NV). The Department preliminarily grants a separate rate to five additional companies which demonstrated eligibility for separate rate status; the rates assigned to each of these seven companies can be found in the "Preliminary Results" section.

The Department invites interested parties to comment on these preliminary results. If these preliminary results are adopted in the final results, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which assessment rates are above de minimis.

EFFECTIVE DATE: [Insert date of publication in the Federal Register]

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SUPPLEMENTARY INFORMATION:

Background

On November 16, 1994, the Department published in the Federal Register the antidumping duty order on fresh garlic from the PRC.¹ On November 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC for the period November 1, 2009 through October 31, 2010.² On December 28, 2010, the Department published a notice of initiation of administrative review with respect to 112 companies.³ On October 20, 2011, the Department published partial preliminary results, rescission of, and intent to rescind, in part, the administrative review.⁴

In February 2011, each of the following five companies timely submitted a separate rate status certification: (1) Hebei Golden Bird Trading Co., Ltd. (Golden Bird); (2) Shenzhen Xinboda Industrial Co., Ltd. (Xinboda); (3) Henan Weite Industrial Co., Ltd. (Henan Weite); (4) Jinan Farmlady Trading Co., Ltd. (Farmlady); (5) Qingdao Xintianfeng Foods Co., Ltd. (QXF). On March 4, 2011, Chengwu County Yuanxiang Industry & Commerce Co., Ltd. (Yuanxiang) submitted a separate rate status certification and explained that its submission was delayed due to a medical issue with one of its attorneys. The Department found this explanation to be

¹ See Antidumping Duty Order: Fresh Garlic From the People's Republic of China, 59 FR 59209 (November 16, 1994) (Order).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 75 FR 67079 (November 1, 2010).

³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 75 FR 81565, 81568-81569 (December 28, 2010) (Initiation Notice). The Department also initiated a review of Zhengzhou Dadi. However, the responses of Shenzhen Xinboda, a mandatory respondent, indicate that Zhengzhou Dadi is its affiliated producer. As such, we will address Zhengzhou Dadi in the context of our analysis of Shenzhen Xinboda. We do not include Zhengzhou Dadi in our company counts in this notice.

⁴ See Fresh Garlic From the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009-2010 Administrative Review, 76 FR 65172 (October 20, 2011) (Partial Preliminary Results).

reasonable and therefore accepted the certificate. On August 17, 2011, the Department moved documents related to Yantai Jinyan Trading Inc.'s (Jinyan) separate rate status, submitted by Jinyan during the most recently complete new shipper review, to the record of this administrative review.⁵

On March 4, 2011, the Department selected the five largest exporters by volume as mandatory respondents: (1) Shandong Longtai Fruits and Vegetables Co., Ltd. (Longtai); (2) Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao); (3) Golden Bird; (4) Xinboda; (5) Harmoni.⁶ On March 14, 2011, the Department issued a Non-Market Economy Antidumping Duty Questionnaire (Initial Questionnaire) to each of the five mandatory respondents. Golden Bird and Xinboda submitted their responses on April 25 and May 18, 2011, respectively.⁷ Petitioners⁸ commented on these responses on July 6, 2011; and Golden Bird responded to Petitioners' comments on July 20, 2011. On July 29, 2011, the Department issued its first supplemental questionnaires to Golden Bird and Xinboda, and received responses from both on August 19, 2011. On August 29, 2011, Petitioners made their initial comments on the supplemental questionnaire responses and renewed their request to conduct verification. On September 19, 2011, Petitioners commented on Xinboda's supplemental questionnaire response. On October 5, 2011, Petitioners commented on Golden Bird's supplemental questionnaire

⁵ See Memorandum to The File, Through Dana S. Mermelstein, From Jacqueline Arrowsmith, Re: Moving Yantai Jinyan's Separate Rates Application to the November 1, 2009 through October 31, 2010 (16th) Administrative Review (August 17, 2011).

⁶ See Memorandum to Barbara E. Tillman, Through Thomas Gilgunn, From Nicholas Czajkowski, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum (March 4, 2011).

⁷ The Department granted several extensions (in April through November 2011) for various sections of the Initial Questionnaire.

⁸ The Petitioners are the Fresh Garlic Producers Association, its individual members being Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

response, and Golden Bird rebutted these comments on October 17, 2011. On October 20, 2011, consistent with 19 CFR 351.213(d)(1), the Department rescinded the review with respect to Harmoni because both Petitioners and Harmoni had withdrawn their respective requests for a review of Harmoni within the 90 day period provided by the regulations.⁹ Also on October 20, 2011, the Department determined that Hongqiao and Longtai are subject to the PRC-wide entity rate.¹⁰ On October 28, 2011, the Department issued second supplemental questionnaires to Golden Bird and Xinboda. Golden Bird submitted its supplemental response on November 14, 2011, and Xinboda submitted its supplemental response on November 16, 2011. The Department notes that these questionnaire responses were received too late to be considered for this preliminary determination. The Department will therefore consider these submissions in its analysis for the final results.

On March 31, 2011, the Department issued a letter to interested parties soliciting comments on selecting surrogate country and surrogate values (SV). On July 12, 2011, Petitioners submitted SV information. On July 29, 2011, Petitioners provided additional SV information which was rebutted by Golden Bird in a submission dated August 8, 2011 and commented on by Yuanxiang in a submission dated August 11, 2011. Also on July 29, 2011, Golden Bird provided SV information which was rebutted by Petitioners in a submission dated August 5, 2011, and that submission was rebutted by Golden Bird on August 15, 2011 (sur-rebuttal); Petitioners commented on the sur-rebuttal on September 15, 2011, and those sur-rebuttal comments were commented on by Golden Bird on October 11, 2011. On October 5, 2011, Xinboda asked the Department to clarify and revise the surrogate country list in the

⁹ See Partial Preliminary Results.

¹⁰ See Partial Preliminary Results.

Department's letter issued on March 31, 2011; Petitioners responded to Xinboda's request on October 13, 2011. On October 26, 2011, Petitioners provided comments in advance of the preliminary results.

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping duty investigations and administrative reviews.¹¹ A designation as an NME country remains in effect until it is revoked by the Department pursuant to section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act). No interested party to this proceeding has contested such treatment. Hence, the Department calculated NV using factors of production (FOPs) methodology in accordance with section 773(C) of the Act.

Market-Oriented Industry

On July 29, 2011 and August 15, 2011, Golden Bird informed the Department that it should consider granting the PRC garlic industry market economy (ME) treatment. The Department has interpreted this as a request that the Department conduct a market oriented industry (MOI) examination for the PRC garlic industry. On August 5, 2011, Petitioners submitted a letter to the Department stating that the Department should reject this MOI request as being without merit.

As a threshold matter, the Department requires that any MOI claim be submitted such that it provides sufficient time to consider the claim.¹² As the Department made clear in the Coated Paper Preliminary Results, respondents that request MOI treatment should submit a complete MOI claim no later than two months after the initiation of a segment of a proceeding. This ensures that there is sufficient time to analyze the request and in the event the Department

¹¹ See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, The People's Republic of China (PRC) Status as a Non-Market Economy (NME), dated May 15, 2006. This document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>.

¹² See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24892 (May 6, 2010) (Coated Paper Preliminary Results).

makes an affirmative MOI determination, there would be sufficient time in a proceeding to obtain home market prices and/or cost data.¹³

In order to consider a timely submitted MOI claim, the Department requires information on each of the three prongs of the MOI test regarding the situation and experience of the PRC garlic industry as a whole. Specifically, the Department requires information in support of the party's claims that: (1) there is virtually no government involvement in production or prices for the industry; (2) the industry is marked by private or collective ownership that behaves in a manner consistent with market considerations; and (3) producers pay market-determined prices for all major inputs and for all but an insignificant proportion of minor inputs. Even in those cases where the Department limits the number of firms it investigates, an MOI claim must cover all (or virtually all) of the producers in the industry in question.¹⁴

The Department finds that Golden Bird's request that the Department consider granting the PRC garlic industry ME treatment is an untimely and deficient MOI request. As an initial matter, Golden Bird's request was not received by the Department until July 29, 2011, seven months after the initiation of this review, well beyond any reasonable time in which to properly consider and act on a claim, and well beyond the two month-period following initiation to make a claim that the Department specified in Coated Paper Preliminary Results.

¹³ See Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China, 62 FR 41347, 41353 (August 1, 1997) (Crawfish LTFV Final).

¹⁴ See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) (TV Receivers LTFV Final), and accompanying Issues and Decision Memorandum at Comment 1. See also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China, 64 FR 69723, 59725 (December 14, 1999) (Indigo Preliminary Results). See also Crawfish LTFV Final, 62 FR at 41353.

In addition to being untimely, Golden Bird's request is deficient as an MOI claim because Golden Bird failed to demonstrate that it represents "all or virtually all of the producers" in the garlic industry.¹⁵ Meeting this initial threshold is necessary to ensure that the Department's MOI analysis is based on evidence that reflects the experience of the garlic industry.¹⁶ Moreover, Golden Bird's request does not meaningfully attempt to address any of prongs of the MOI test regarding ownership and market-determined inputs.¹⁷ For all of the reasons noted above, the Department determines that the MOI claim does not warrant further consideration in this review.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries.¹⁸

¹⁵ See TV Receivers LTFV Final and accompanying Issues and Decision Memorandum at Comment 1 (an MOI allegation must cover all (or virtually all) of the producers in the industry in question). See Indigo Preliminary Results, 64 FR at 69725. See also Crawfish LTFV Final, 62 FR at 41353.

¹⁶ Golden Bird's request is unclear as to the garlic industry for which it claims "market economy treatment." Golden Bird is a trading company who sells fresh garlic produced by a non-integrated processor.

¹⁷ We note that Golden Bird's request provided no information to substantiate the claims regarding the first prong of the MOI test regarding the "independence" of garlic farmers and the absence of government regulation of "garlic production and market".

¹⁸ See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine and Peru are countries comparable to the PRC in terms of economic development.¹⁹ Once the Department has identified the countries that are economically comparable to the PRC, the Department selects an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

For the preliminary results, Golden Bird, Yuanxiang, and Petitioners submitted data for valuing FOPs, and these data are sourced from India. On October 5, 2011, Xinboda argued for the first time that India is not the appropriate surrogate country for this review because its economic comparability was determined based on the data which is not contemporaneous with the POR. Responding to Xinboda's argument, on October 13, 2011, Petitioners argued that India is the only appropriate surrogate for comparable merchandise.

The Department issued its list of potential surrogate countries on March 31, 2011, providing parties four months, until July 29, 2011,²⁰ in which to comment on the selection. On October 5, 2011, more than two months after the deadline, Xinboda argued against the selection of India and provided no explanation for the delay or data in support of an alternative surrogate country. In light of the untimeliness of Xinboda's argument and the lack of any alternative SV data to consider, the Department declines to reject India as the surrogate country for the preliminary results.

¹⁹ See Letter to All Interested Parties, Re: 16th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (March 31, 2011).

²⁰ See Memorandum to All Interested Parties, Through Thomas Gilgunn, From David Lindgren, Subject: Request for Extension to Submission of Comments and Information related to Surrogate Country and Values Selection (June 28, 2011).

Accordingly, the Department has determined that India is the appropriate surrogate country for use in this review, based on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs.²¹ Therefore, the Department has selected India as the surrogate country and, accordingly, has calculated NV using Indian prices to value the respondent's FOPs, when available and appropriate. The Department has obtained and relied upon publicly available information wherever possible.

Normal Value

A. Methodology

We compared NV to individual EP transactions in accordance with section 777A(d)(2) of the Act, as appropriate. Section 773(c)(1)(B) of the Act provides that the Department shall determine NV using an FOPs methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies.²² However, there are

²¹ See Memorandum to The File, Through Thomas Gilgunn, From Lingjun Wang, Re: Fresh Garlic from the People's Republic of China - 2009-2010 Administrative Review - Surrogate Values for the Preliminary Results (November 30, 2011) (SV Memorandum).

²² See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China), 71 FR 53079 (September 8, 2006)).

circumstances in which the Department will modify its standard FOP methodology, choosing to apply SVs to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using SVs.²³

For the final results of several prior administrative reviews and new shipper reviews under the garlic order,²⁴ the Department found that garlic industry producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information. In the preliminary results of Garlic 11, Garlic 12, Garlic 13, and Garlic 15, the Department also stated that “should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported

²³ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People’s Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (PVA) (citing Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People’s Republic of China, 66 FR 31204 (June 11, 2001)).

²⁴ See, e.g., Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) (Garlic 11); Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 12th Administrative Review, 73 FR 34251 (June 17, 2008) (Garlic 12); Fresh Garlic from the People’s Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews, 73 FR 56550 (September 29, 2008); and Fresh Garlic From the People’s Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 29174 (June 19, 2009) (Garlic 13); and Fresh Garlic From the People’s Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 37321 (June 27, 2011) (Garlic 15).

FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV.”²⁵

For the preliminary results, the Department is applying an “intermediate-input product valuation methodology” to calculate NV for Golden Bird and Xinboda.²⁶

B. Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs data reported by Golden Bird and Xinboda for the POR. We relied on the factor-specific data submitted by Golden Bird and Xinboda for the production inputs in their questionnaire responses, where applicable, for purposes of selecting SVs. To calculate NV, the Department multiplied the reported per-unit factor consumption rates by publicly available India SVs.

In selecting the SVs, consistent with our past practice, the Department considered the quality, specificity, and contemporaneity of the data.²⁷ As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to the SVs, as appropriate, a surrogate freight cost using the shorter of the reported distance from the domestic suppliers to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of

²⁵ See Fresh Garlic from the People’s Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews, 71 FR 71510, 71520 (December 11, 2006); Fresh Garlic from the People’s Republic of China: Notice of Preliminary Results and Preliminary Partial Rescission of the Twelfth Administrative Review, 72 FR 69652 (December 10, 2007); Fresh Garlic from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative and New Shipper Reviews and Intent to Rescind. In Part, the Antidumping Duty Administrative and New Shipper Reviews, 73 FR 74462 (December 8, 2008); and Fresh Garlic from the People’s Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review, 75 FR 80458 (December 22, 2010). All were unchanged in their respective final results.

²⁶ See Memorandum to Thomas Gilgunn, From Lingjun Wang, Re: Fresh Garlic from People’s Republic of China 2009-2010 Administrative Review-Intermediate Input Methodology (November 30, 2011).

²⁷ See, e.g., Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

Appeals for the Federal Circuit (CAFC). See Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir.1997). Where necessary, we adjusted the SVs for inflation/deflation using the Wholesale Price Index (WPI) as published in the International Monetary Fund's International Financial Statistics, available at <http://ifs.apdi.net/imf>. For more information regarding the Department's valuation for the various FOPs, see SV Memorandum.

Garlic Bulb Valuation

The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act,²⁸ is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR.²⁹

As discussed above, the Department is applying an intermediate input methodology for Golden Bird and Xinboda. Therefore, the Department sought to identify the best available SV for the garlic bulb input into production. For the preliminary results, the Department finds that data from the Azadpur APMC's "Market Information Bulletin" are the most appropriate information available to value the garlic bulb input. Consistent with the findings in the Garlic 12, Garlic 13, and Garlic 15, the Department continues to find that garlic bulb sizes that range from 55 mm and above are Grade Super-A, and garlic bulb sizes that range between 40 mm and 55 mm are Grade A and Grade Super-A. The Department has used Grade A and Grade Super A for garlic bulb valuation. Because the Grade Super-A prices reported by the APMC which are

²⁸ Section 773(c)(1)(B) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority."

²⁹ See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

on the record of this review are from 2007-2008, the Department applied a garlic-specific Wholesale Price Index to the non-contemporaneous data to make them contemporaneous to the POR.

Other Factors of Production

The Department has obtained import statistics from the Global Trade Atlas (GTA) for valuing various FOPs. The data reported in the GTA published by the Global Trade Information Services, such as those from India, are in original currency and correspond to the original currency value reported by each country. Additionally, these data are reported to the nearest digit which has the same level of accuracy as the original data released.

Furthermore, with regard to the GTA Indian import-based SVs, in accordance with the Omnibus Trade and Competitiveness Act of 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.³⁰ In this regard, the Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea and Thailand, because the Department has determined that these countries maintain broadly available, non-industry specific export subsidies.³¹ Based on the existence of these subsidy programs that were generally available to all exporters and producers in Indonesia, South Korea, and Thailand at the time of the POR, the Department finds that it is reasonable to infer that all exporters from these countries

³⁰ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

³¹ See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; and Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

may have benefitted from these subsidies. The Department also disregarded prices from NME countries³² and those imports that were labeled as originating from an “unspecified” country from the average Indian import values, because we could not be certain that they were not from either an NME or a country with general export subsidies.

The Department valued the packing material inputs using weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and compiled by the GTA.

The Department valued truck freight cost using a per-unit average rate calculated from monthly data published on <http://www.infobanc.com/logistics/logtruck.htm>³³ for the POR.

The Department valued electricity using March 2009 electricity price rates from Electricity Tariff & Duty and Average Rates of Electricity Supply in India, published by the Central Electricity Authority of the Government of India.

The Department valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of

³² The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, North Korea, the People’s Republic of China, Tajikistan, Turkmenistan, Uzbekistan, and the Socialist Republic of Vietnam.

³³ See Polyethylene Retail Carrier Bags From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 52282, 52286 (September 9, 2008) (unchanged in Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (February 11, 2009)); and SV Memorandum at Attachment 9.

goods by ocean transport in India that is published in Doing Business 2010: India, published by the World Bank.

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondents' cost of labor in NME cases. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (CAFC), in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (Dorbest), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in Dorbest, the Department no longer relies on the regression-based wage rate methodology described in its regulations.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.³⁴ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).

In these preliminary results, the Department calculated the labor input using the wage method described in Labor Methodologies. To value Golden Bird and Xinboda's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC–Revision 3 (15-Manufacture of Food Products and Beverages) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce

³⁴ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (Labor Methodologies).

comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard, in accordance with section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is 33.028 Rs per hour.

Financial Ratios

The Department is using Tata Tea Ltd.'s (Tata Tea) unconsolidated 2010/2011 financial statements as the basis for the surrogate financial ratios. Since the 2002-2003 administrative review, the Department has considered tea processing to be sufficiently similar to garlic processing in that neither product is highly processed or preserved prior to sale.³⁵ Accordingly, the Department finds that non-integrated tea processors to be a comparable industry to fresh garlic. Tata Tea's unconsolidated financial statement indicates that it has not received subsidies under programs the Department has found countervailable in Indian countervailing duty proceedings³⁶ and Tata Tea's unconsolidated 2010/2011 financial statements cover seven months of the instant POR. The Department has not used Golden Bird's suggested financial data from Limtex Tea Limited, Garlico, REI Agro Limited and LT Foods Limited because, in Garlic 15, the Department found that the 09/10 financial statements of Limtex Tea Limited, REI Agro Limited and LT Foods Limited indicated that each company received subsidies under programs the Department found to be countervailable. Moreover, Garlico's 09/10 financial statements indicate that it operates as a trading company (rather than a processor) for nearly one quarter of its sales. Although parties

³⁵ See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) (Garlic 9), and accompanying Issues and Decision Memorandum at 34-35.

³⁶ In Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 17.A, the Department stated that its practice is to disregard financial statements where we have reason to suspect that the company has received actionable subsidies, and where there is other usable data on the record.

have argued that Tata Tea has received subsidies the Department has found countervailable, in our analysis of Tata Tea's 09/10 financial statement, we did not find evidence of these subsidies.

For these reasons, the Department finds that Tata Tea's unconsolidated financial statement is the best information on the record and provides complete and usable financial data for a non-integrated producer and seller of tea.

U.S. Price

In accordance with section 772(a) of the Act, we calculated export prices (EP) for Golden Bird's and Xinboda's sales to the United States because they were made to unaffiliated parties before the date of importation. We calculated Golden Bird's and Xinboda's EP based on their price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted movement expenses (e.g. foreign inland freight, international freight, brokerage and handling, marine insurance, warehousing, and U.S. customs duties) from the starting price to unaffiliated purchasers. For the expenses that were either provided by an NME vendor or paid for with an NME currency, we used SVs as appropriate.

Separate Rate

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.³⁷ It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both de jure and de facto governmental control over

³⁷ See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), as further developed in the Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

In the Initiation Notice, the Department explained the process by which exporters and producers not being individually reviewed may obtain separate rate status in NME reviews. The process requires exporters and producers to submit a separate rate status application or separate rate status certification. However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both de jure and de facto government control over its export activities) has not changed.

Golden Bird, Xinboda, Henan Weite, Farmlady, QXF, and Yuanxiang each certified its eligibility for separate rate status with a Separate Rate Certification. The Department moved Jinyan's Initial Questionnaire response and supplemental questionnaire responses from a new shipper review to this review.³⁸ Jinyan's new shipper review sale was found to be outside of the

³⁸ See Memorandum to The File, Through Dana S. Mermelstein, From Jacqueline Arrowsmith, Re: Moving Yantai Jinyan's Separate Rates Application to the November 1, 2009 through October 31, 2010 (16th) Administrative Review.

POR of the new shipper review, so the Department rescinded that review.³⁹ However, as Jinyan's sale was within the POR of this administrative review, the Department transferred the documents from Jinyan's questionnaire responses from the new shipper review that related to its eligibility for a separate rate to the instant review for consideration here. These documents serve as the basis for the Department to consider Jinyan's for eligibility for separate rate status. Each company reported that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether each company can demonstrate the absence of both de jure and de facto government control over export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.⁴⁰

Golden Bird, Henan Weite, Xinboda, Farmlady, QFX, Yuanxiang and Jinyan each certified that, consistent with the most recently complete segment of this proceeding in which it participated and was granted a separate rate, there is an absence of de jure government control of its exports.⁴¹ Each of these companies certified to its separate rate status, and stated, where

³⁹ See Fresh Garlic From the People's Republic of China: Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co., Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc., 76 FR 52315 (August 22, 2011).

⁴⁰ See Sparklers.

⁴¹ The most recently complete segment of this proceeding in which Golden Bird participated and was granted a separate rate was Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews, 73 FR 56550 (September 29, 2008). The most recently complete segment of this

applicable, that the company had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information on the record that would cause us to reconsider the previous de jure control determinations with regard to these companies. Thus, the Department finds that evidence on the record supports a preliminary finding of an absence of de jure government control with regard to the export activities of these companies.

b. Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC.⁴² Therefore, the Department has determined that an analysis of de facto control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The absence of de facto government control over exports is based on whether a company: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other

proceeding in which Henan Weite participated and was granted a separate rate was Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review, 75 FR 34976 (June 21, 2010). The most recently complete segment of this proceeding in which Xinboda, Farmlady, and QXF participated and were granted a separate rate was Garlic 15. The most recently complete segment of this proceeding in which Yuanxiang participated and was granted a separate rate was Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews, 74 FR 50952 (October 2, 2009).

⁴² See Silicon Carbide, 59 FR at 22586-87.

agreements; and (4) has autonomy from the government regarding the selection of management.⁴³

Each company certified that there is an absence of de facto government control of its exports in the most recently complete segment of proceeding in which it was granted a separate rate. Their separate rate certifications, stated, where applicable, that they had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information on the record that would cause us to reconsider the previous period's de facto control determinations with regard to these companies. Therefore, the Department preliminarily finds that these companies have established, prima facie, that they qualify for separate rates under the criteria established by Silicon Carbide and Sparklers.

Margin for the Separate Rate Recipients

As discussed above, the Department has preliminarily determined that Golden Bird, Xinboda, Henan Weite, Farmlady, QXF, Yuanxiang, and Jinyan have demonstrated their eligibility for separate rate status. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the

⁴³ See, e.g., Silicon Carbide, 59 FR at 22587, and Sparklers, 56 FR at 20589; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

exporters subject to a review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, de minimis, or based entirely on facts available.⁴⁴ However, the Department has calculated a positive margin for the two fully participating mandatory respondents, Golden Bird and Xinboda. Accordingly, for the preliminary results, consistent with our practice, the Department has preliminarily determined that the margin to be assigned to the separate rate recipients should be a simple average of these two margins.⁴⁵

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. See <http://www.ia.ita.doc.gov/exchange/index.html>.

Preliminary Results

As a result of the review, the Department preliminarily determines that the following margins exist for the period November 1, 2009 through October 31, 2010:

⁴⁴ See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review, 73 FR 8273, 8279 (February 13, 2008) (unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008)).

⁴⁵ See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011).

Companies	Weighted-Average Margin (dollars per kilogram)
Hebei Golden Bird Trading Co., Ltd.	\$0.20/kg
Shenzhen Xinboda Industrial Co., Ltd.	\$0.75/kg
Henan Weite Industrial Co., Ltd.	\$0.48/kg
Jinan Farmlady Trading Co., Ltd.	\$0.48/kg
Qingdao Xintianfeng Foods Co., Ltd.	\$0.48/kg
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	\$0.48/kg
Yantai Jinyan Trading Co., Ltd.	\$0.48/kg
PRC-Wide Rate	\$4.71/kg

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR §351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (i.e., per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions for such companies directly to CBP 15 days after the publication of this notice in the Federal Register.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be

the rate established in these final results of review (except, if the rate is zero or de minimis, i.e., less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of \$4.71 per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.⁴⁶ Rebuttals to written comments may be filed no later than five days after the written comments are filed.⁴⁷

Any interested party may request a hearing within 30 days of publication of this notice.⁴⁸ Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

⁴⁶ See 19 CFR 351.309(c); Parties submitting written comments must submit them pursuant to the Department's e-filing regulations. See <https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf>.

⁴⁷ See 19 CFR 351.309(d).

⁴⁸ See 19 CFR 351.310(c).

Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.⁴⁹

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR §351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Paul Piquado
Assistant Secretary
for Import Administration

November 30, 2011
Date

⁴⁹ See 19 CFR 351.310(d).

